IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR.

J U D G M E N T

Kajodmal & Ors vs. M/s. Harlal Madan Lal & Ors.

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S.B. Civil First Appeal No.68/1989 under Section 96 C.P.C. against the judgment and decree dated 17.03.1989 passed by Shri Bihari Lal Gupta RHJS, Additional District Judge, Dausa, District Jaipur in Civil Suit No.4/83 decreeing the suit of the plaintiff respondents.

Date of Judgment :::::: November 23, 2006

PRESENT

HON'BLE MR.JUSTICE KHEM CHAND SHARMA

Mr.O.P.Mishra for the appellants.
Mr.J.P.Goyal for respondents.

BY THE COURT (ORAL):-

The facts in brief giving rise to this appeal are that the plaintiff respondents filed a suit against the

defendant-appellants for recovery of Rs.10,900/- with the averments that the defendants purchased the grocery item on credit. On Kartik 1 Samvat 2035 the accounts were settled and as per the settlement of accounts Rs.25,601/-was due towards defendants and defendant Mohan Lal put signatures on the account book (Bahi). Thereafter some more grocery goods were sent by the plaintiffs and as per settlement of the accounts on Kartik Sudi 1 Samvat 2036 Rs.25,089/- became due towards the defendants. Thereafter, Mohan Lal defendant borrowed Rs.30,000/- and Rs.2,000/- in cash regarding which entry was made by the plaintiff in daily accounts and Mohan Lal defendant No.3 put his signatures on the Bahi. It was mentioned in the plaint that an amount of Rs.2,500/- and Rs.3,500/- were borrowed by the defendants in cash regarding which the plaintiff made entry in his account book. It was averred in the plaint that in this manner Rs.36,089/- were out standing against the defendants for which a writing was made in the accounts book and defendants Hajari Lal and Mohan Lal put their signatures. Against this amount, the defendants made payment of Rs.30,000/- for which a receipt was issued on 23.6.1980 which was signed by defendant Mohan Lal. The plaintiffs mentioned in the plaint that in this manner Rs.6,089/- along with interest amount of Rs.4,820/-remained due towards the defendants. On the strength of the averments

made in the plaint, the plaintiffs prayed for a decree of Rs.10,909/- with interest from the date of filing of the suit till realisation.

2. Defendant Nos.1 to 3 filed their written statement and came with this plea that defendants 4 and 5 have no connection with defendant firm. They also denied the fact of any cash amount having been taken from the plaintiff. They also denied that they settled the accounts with the plaintiff firm and put their signatures. It was also mentioned that the plaintiff firm is not a registered firm and thus, it has no authority to bring the suit. Lastly, it was pleaded that the suit is barred by limitation.

3. Defendant No.4 filed separate written statement and came with the plea that defendant No.1 is not a firm of Joint Hindu Family and defendant Nos.2 to 5 are not the owners of the firm. It is also the case of defendant No.4 that defendant Nos.4 and 5 have no connection with the firm as they are residing at Gangapur and not at Ramgarh. The defendant also denied the fact of purchase of grocery items from the plaintiff. He has also denied the fact that he deposited Rs.30,000/- towards the debt. The defendant came with this case that the plaintiff fraudulently got executed the registry of the land situated at Gangapur which belonged to defendant Nos.4 and 5 and did not pay any

amount in cash. He also denied his connection with the firm, defendant No.1. Defendant No.5 also filed a separate written statement in the same manner as has been done by defendant No.4.

4. After framing issues, recording evidence of the parties and hearing learned counsel for the parties the learned trial court vide judgment dated 17th March, 1989 decreed the suit of the plaintiff-respondents for Rs.10,900/- with future interest @ 12% per annum. It was also ordered by the learned trial court that the amount of interest shall not exceed the principal sum i.e. Rs.6,089/-. Hence, this appeal.

5. Plaintiff-respondents have filed cross-objection against the direction of the learned trial court to the extent that the plaintiffs would not be entitled interest more than Rs.6,089/- in any case.

6. Heard learned counsel for the parties.

7. In assailing the impugned judgment and decree, learned counsel for the appellants has raised two fold arguments. The first argument raised by learned counsel for the appellants is that the transactions between the plaintiff and the defendant firms took place in the year 1978 and

whereas appellant Kajod Mal had already retired from the partnership firm and was no longer a partner of the firm. It was submitted that appellant Kajod Mal had retired from the firm w.e.f. 13.11.1974 and thus, when the transactions between the parties took place, he was not a partner of the partnership firm and therefore, he cannot be held liable for the transactions by the defendant firm. Learned counsel for the appellants in support of his contention has filed certificates issued by the Registrar of Firms along with an application under Order 41 rule 27 C.P.C. for taking the same on record. The second argument of the learned counsel for the appellants is that the suit was barred by limitation and therefore, there was no occasion for the trial court to entertain the suit and for decreeing the same.

8. For the reasons mentioned in the application under Order 41 rule 27 C.P.C. the same is allowed and the certificates issued by the Registrar of Firms are taken on record.

9. Learned counsel appearing for the respondents on the other hand while supporting the judgment and decree has assailed the direction of the learned trial court that the plaintiffs would not be entitled to interest more than the

principal sum in any case. Learned counsel has contended that this condition imposed by the learned trial court is without jurisdiction and contrary to the law and that the plaintiffs are entitled to get interest on the principal sum @ 12% per annum. In support of his contention, learned counsel for the plaintiff respondents has drawn the attention of the court to the provisions of Section 34 C.P.C.

10. In counter to the arguments raised by the learned counsel for the appellants regarding maintainability of the suit on the ground of limitation, learned counsel for the respondents placing reliance on Ex.2A and 7A contended that on 23.6.1980 an amount of Rs.30,000/- was debited in the account of the defendants on account of purchase of land from them by the plaintiffs and defendant Mohan Lal acknowledged the entry. Thus, the suit filed on 7.2.1983 was within the prescribed limitation.

11. Placing reliance on a Full Bench judgment of this Court in the case of ***Thakur Sheokaran Singh*** ***vs.*** ***Daulatram*** **(1956 RLW 81),** learned counsel for the plaintiff respondent contended that the rule of damdupat has no application in the present case.

12. After hearing learned counsel for the parties, I have gone through the material and evidence available on record as well as the relevant provisions of law.

13. So far as the first argument is concerned, from the certificates issued by the Registrar of Firms it is clear that defendant-appellant Kajod Mal joined the partnership firm on 19th October,1960 but he retired from the partnership of the firm w.e.f. 13th November,1974. It is also an admitted case of the plaintiff respondents that the transactions with the defendant firm took place in the year 1978 i.e. after retirement of defendant appellant Kajod Mal. Hence, he cannot be held liable for the transactions on behalf of the partnership firm. In this view of the matter, the decree against defendant appellant Kajod Mal is liable to be set aside and it is set aside accordingly.

14. For the second argument regarding limitation, suffice it to say that as per the documents Ex.2A and Ex.7A, an amount of Rs.30,000/- was credited on 23th June,1980 in the account of the defendants towards the cost of the land purchased by the plaintiffs from the defendants which has been acknowledged by Hajari Lal and Mohan Lal on behalf of the firm Bhonri Lal Hajari Lal and defendant Mohan Lal, in

his statement, has admitted the fact that he put his signature on these documents. In this view of the matter it is clear that the last transaction between the parties took place on 23th June, 1980 and since the suit was filed on 7.2.1983, it was within the prescribed period of limitation i.e. three years. Thus, the finding of the learned trial court on this point is in accordance with law and does not call for any interference.

15. I have also considered the submissions made by the learned counsel for the plaintiff-respondent regarding the observation of the learned court that the plaintiffs will not be entitled to get interest more than the principal sum. Section 34 C.P.C. provides that where and in sofar as a decree is for the payment of money, the court may, in the decree order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged, ***from the date of the suit to the date of the decree,*** in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate not exceeding six per cent per annum as the court deems reasonable on such principal sum ***from the date of the decree to the date of payment,*** or to such

earlier date as the court thinks fit. Proviso to sub-section (1) of Section 34 provides that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six percent per annum but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions.

16. In view of the Full Bench decision in the case of Thakur Sheokaran Singh (supra), I am of the opinion that the rule of damdupat as recognised by the Hindu Law, in the absence of any statute, is no longer of binding force and cannot be given effect to in the State of Rajasthan. Even if it is made applicable it can be made applicable till **filing of the suit** and not till realisation of the amount. Therefore, the plaintiff-respondents are entitled to get interest as awarded by the trial court till filing of the suit and thereafter in view of provisions of Section 34 C.P.C. they are entitled to get interest @ 6% per annum till the date of realisation.

17. In the result, the appeal as well as the cross-

objections are allowed in part. It is held that plaintiff appellant Kajod Mal retired from the partnership firm much prior to the transactions between the parties and thus, suit could not be decreed against him. It is directed that the plaintiff respondents are entitled to get interest on Rs.6089/- @ 6% per annum till realisation from the defendants except Kajod Mal. The plaintiffs' suit is decreed in the following manner:-

(1) Plaintiffs' suit is decreed against the defendants except defendant No.4 Kajod Mal for Rs.10,900/-. Plaintiffs shall be entitled to interest @ 6% per annum on Rs.6089/- from 6.4.1983 till realization.

18 The decree of the trial court stands modified to the extent as indicated above with no order as to costs.

(K.C.Sharma),J.

Bairwa